

Guide to Changes in the State Planning Council Rules of Procedure

OLD

Title: State Planning Council Rules of Procedure

Rule I: Organization and Operation of the State Planning Council

Rule 1: Name

Rule 2: Organization and Purpose

Changes: The old Rules 1 and 2 consisted of a recitation of sections of RIGL 42-11-10. The new Rule 1.1 is a DOA standardized statement that references RIGL 42-11-10 and the Administrative Procedures Act.

Rule 3: Definitions

Changes: All definitions were consolidated in this section. Some definitions were reworded for clarity, obsolete or redundant definitions were deleted, and a few new definitions were added. One significant change involves how the Council defines consistency/conformity with the State Guide Plan. Previously, the Rules included a strict definition of “Consistent with” and a less restrictive provision for “Substantial Conformance”. The revised Rules delete “Substantial Conformance” but provide a less restrictive definition of consistency/conformity. Another significant change is the addition of a definition for “Solid Waste Disposal Facility”. In addition, “Administrative adjustment” was deleted because it was redundant to the definition for “Technical correction”.

Rule 4: Powers and Duties

Explanation: Rule 4 was deleted because it was a direct recitation from §42-11-10. DOA legal staff advised that this was unnecessary and does not follow current DOA rule-making practices.

Rule 5: Members of the Council

Changes: Minor revisions only, e.g. direct recitations from §42-11-10 were deleted, some provisions were reorganized for clarity, etc.

Rule 6: Officers of the Council

Rule 7: Duties of Officers

Changes: The old Rules 6 and 7 were combined for ease of use. Some minor modifications were made to eliminate redundancies and unnecessary language.

NEW

Title: Rules and Standards of the State Planning Council

Rule 1.1 Purpose and Authority

Rule 1.2 Definitions

deleted

Rule 1.3 Membership

Rule 1.4 Officers and Duties

Rule 8: Attendance

Rule 1.6 Attendance

Changes: Rule 8.2 “Designees” was revised on the advice of legal counsel. The Council does not have the authority to allow designees; however, department directors already have the authority to assign designees under separate statute (RIGL 42-6-8).

Rule 9: Meetings

Rule 1.5 Meetings

Changes: Detailed requirements not normally found in Rules were deleted. Specifically, the requirement that meetings be held “the second Thursday of each month” and the required content of the agendas. Language was added that gives the Council more discretion in these matters.

Rule 10: Meeting Records and Voting

deleted

Explanation: This rule was deleted because “meeting records” are already covered by the Open Meetings Act and “voting” is covered by Roberts Rules of Order.

Rule 11: Filling a Vacancy

Rule 1.3.3 Vacancies

Changes: No change. This rule was merely moved under Rule 1.3 (Membership) for clarity.

Rule 12.01: The State Guide Plan

Rule Two: Adoption and Maintenance of the State Guide Plan

Changes: The new Rule Two is a major revision and expansion of the old Rule 12.01. A direct comparison is not practical in this summary guide. In general, it provides for coordination and outreach in the preparation of a plan, and sets the procedures for adopting, amending, correcting, or repealing a plan.

Rule 12.02: Rules of Procedure (also see Rule 18: Amendments)

Rule 1.8 Amendments

Changes: Rule 12.02 covered the procedures for amending the Rules of Procedures. This rule was renamed and edited for clarity.

Rule 12.03: Work Program

Rule 1.11 Annual Work Program

Rule 5.3 Unified Planning Work Program

Changes: The formulation and adoption of a “work program” was covered twice in the old Rules of Procedure. First by Rule 12.03 “Work Program” and again by Rule IX-3 “Unified Planning Work Program”. In order to enhance the clarity of the rules, all processes for the adoption of a work program are combined under the new Rule 5.3 “Unified Planning Work Program”.

Rule 1.11 is promulgated solely for the purpose of formally noting that the Unified Planning Work Program shall also serve as the Annual Work Program.

Rule 12.04: Findings of Consistency

Rule Three: Review of Project Proposals to
Determine State Guide Plan Consistency
Rule Five: Metropolitan Planning
Organization: Transportation Planning

Changes: The introduction to Rule 12.04 mentioned the Coastal Resources Management Council, the Rhode Island Port Authority and Economic Development Corporation, and the Federal Highway Program. Two additional rules (Rule III: Review of Project Proposals by the Rhode Island Port Authority and Economic Development Corporation and Rule IX: Transportation Planning) also covered this topic. The new Rule Three essentially combines Rule 12.04 and the old Rule III. The new Rule Three retains the basic structure of the review but expands it to cover a broader range of consistency reviews (see following sections). The same is true for the new Rule Five. The Coastal Resources Management Council is no longer mentioned given the flexibility granted to it under its establishing legislation (46-23-6 (iv)(G)) which says that its plans and programs be consistent with the State Guide Plan “*whenever possible*”.

Rule 12.05: Short Term Financial Programs

Rule 5.5: Transportation Improvement
Program; partially deleted

Changes: Rule 12.05 dealt with the Overall Economic Development Program (now known as the Comprehensive Economic Development Strategy) and the Transportation Improvement Program (which was also covered in the old Rule IX Transportation Planning). Transportation Improvement Projects are now covered solely in the new Rule 5.5 “Transportation Improvement Program”. Reference to Comprehensive Economic Development Strategy reviews have been deleted based on conversations with the Economic Development Administration and the passage of legislation to establish an Economic Development Planning Council.

Rule 12.06: Certification of Planning Activities

Statewide Planning Program Procedures and
Guidelines: Intergovernmental Review Process

Changes: Rule 12.06 dealt with federal grants, which was also covered by Rule IV: Rhode Island Intergovernmental Review Process. This rule has been deleted based on the advice of legal counsel. Authority for promulgating these rules was based on a 1983 Gubernatorial Executive Order. While this authority technically still exists, legal counsel recommends that the Council utilize guidelines in lieu of rules for the Intergovernmental Review Process. The new Statewide Planning Program Procedures and Guidelines essentially combine Rule 12.06 and the old Rule IV and updates the process to follow current office structure and procedures.

Rule 12.07: Endorsement Pursuant to Federal
Funding Requirements

deleted

Explanation: This rule was deleted because it appears unnecessary. The purpose of this rule was stated to be, “Many federal regulations require specific documents as prerequisites for federal funding eligibility. The following are the rules for Council approval of the endorsement pursuant to federal funding requirements.” We are not aware of any federal funding requirements that are not covered by the Intergovernmental Review Process or other existing processes.

Rule 12.08: Draft Environmental Impact Statements or Assessments deleted

Explanation: This rule was deleted because it appears unnecessary. Draft Environmental Impact Statements or Assessments (EIS/EA) are typically covered as part of the Intergovernmental Review Process which is covered by the Procedures and Guidelines. If an EIS/EA was submitted that is not covered under Intergovernmental Review, it could still be reviewed under Rule Three: Review of Project Proposals to Determine State Guide Plan Consistency.

Rule 12.09: Functional Classification of the Highway System Rule 5.6 Functional Classification of the Highway System

Changes: This rule was moved to be part of Rule Five: Transportation Planning. Additionally, Rule 12.09 gave authority for approving the functional classification to the Technical Committee; the new Rule 5.6 vests approval in the Transportation Advisory Committee.

Rule 12.10: Air Quality Element deleted

Explanation: This rule set a secondary voting procedure for the adoption of State Guide Plan elements prepared with financial assistance under Section 175 of the Clean Air Act (EPA Grants). The secondary voting procedure would apply only when the initial vote is not unanimous and would require State and public members (by majority vote) to cast a single vote. This rule was deleted because we could not find any reason to retain it.

Rule 12.11: Advisory Reports to the Energy Facility Siting Board deleted

Changes: Legal counsel determined that the Council does not have the statutory authority to issue rules governing these reports. The thrust of Rule 12.11 was to ensure that ex parte communication does not occur with the Associate Director of the Division of Planning who is also a member of the Energy Facility Siting Board. Given that this is well established, staff does not believe that additional guidelines are necessary.

Rule 13: Emergency Procedures Rule 1.9 Rules of Order

Changes: Based on the advice of legal counsel, the provision to waive a mandatory public hearing or the minimum 30-day notice period for a public hearing was deleted.

Rule 14: Public Hearings Rule 1.10 Public Hearings (and others)
Rule II: Rules for Public Hearings

Changes: Rule 14 basically said that the Council will hold public hearings for certain important matters. These are now included directly the appropriate relevant rule. Rule II detailed the public hearing process. The new Rule 1.10 eliminates redundancies with the Administrative Procedures Act, other sections of the Rules, and sets a standard 30-day notice period with the option for either a newspaper ad or web postings.

Rule 15: Committees

Rule 1.7 Committees

Rule 16: Technical Committee

Changes: The new Rule 1.7 updates and standardizes the committee structure and appointment process. Additionally, references to defunct committees e.g. the Human Services Review Committee, and the Physical Resources Review Committee were deleted whereas the RIGIS Executive Committee and Transportation Advisory Committee were added.

Rule 17: Rules of Order

Rule 1.9 Rules of Order

Changes: No change. Roberts Rules of Order remain as the standard used by the Council.

Rule 18: Amendments

deleted

(also see Rule 12.02 Rules of Procedures)

Explanation: Rule 18 merely referred the reader to Rule 12.02. The new rules still contain a rule for amendments (Rule 1.8 Amendments).

Rule 19: Access to Files and Records

deleted

Explanation: This rule was deleted because public access to files and records are already covered by the Access to Public Records law and the policies set by the Department of Administration's Office of Legislative and Legal Support.

Rule 20: State Data Center

deleted

Explanation: Rule 20 allowed the Division to charge "reasonable cost" for providing the Metropolitan Map Series to individuals, organizations, and municipalities. This information is now readily available free of charge through RIGIS.

Rule II: Rules for Public Hearings

Rule 1.10 Public Hearings

(also see Rule 14: Public Hearings)

Changes: In accordance with guidance from the Department of Administration's Office of Legislative and Legal Support, the new Rule 1.10 eliminates redundancies with the Administrative Procedures Act, other sections of these Rules, and follows standard DOA legal practice.

Rule III: Review of Project Proposals by the

Rhode Island Port Authority and
Economic Development Corporation

Rule Three: Review of Project Proposals to
Determine State Guide Plan Consistency

(also see Rule 12.04: Findings of Consistency)

Changes: The new Rule Three essentially combines the old Rule III and Rule 12.04 which partially covered the procedures for reviewing EDC / Quonset Davisville projects. The new Rule Three retains the basic structure of the review but expands it to cover a broader range of consistency reviews.

Rule IV: Rhode Island Intergovernmental

Review Process
(also see Rule 12.06: Certification of Planning Activities)

Statewide Planning Program Procedures and
Guidelines: Intergovernmental Review Process

Changes: The new Statewide Planning Program Procedures and Guidelines: Intergovernmental Review Process essentially combines the old Rule IV and Rule 12.06, which dealt with federal grants. The Intergovernmental Review Process is primarily governed by E.O. 12372 and Gubernatorial Executive Order 83-11. While the new guidelines retain the basic review process, it was revised to eliminate many redundancies to the executive orders and to reflect current Division structure and operating procedures.

Rule V: Solid Waste Facility Siting

Rule Six: Solid Waste Disposal Facility Siting

Changes: The old Rule V included lengthy recitations of provisions taken directly from §§23-18.9 and 23-19. The new Rule Six, following current DOA rule-making practices, completely revised this rule by deleting direct legislative recitations and adding appropriate citations to the relevant laws. The new Rule Six clarifies that only landfills are covered by this rule. It also adds procedural guidance for the submission of review requests and for the preparation of advisory reports.

Rule VI: Inspection and Copying of Graphic
Materials

deleted

Explanation: Rule VI “established priorities of use of graphic materials, designated the custodian of such materials, and set the procedures for inspecting and copying them”. Given the changing nature of technology, the vast majority of the Division’s archive of graphic materials are now accessed electronically. Additionally, to the extent that written guidance is necessary or useful for the management of paper copies, it can be established by agency policy and need not be adopted as rules of procedures, thus allowing easier modifications of policies as changing conditions warrant.

Rule VII: Preservation of Federally Insured
or Assisted Housing

deleted

Explanation: RIGL 34-45-9 (Affordable Housing Act) requires the Department of Administration (note: not the State Planning Council) to “... issue such rules and regulation as may be necessary to effectuate the purposes of this Act”. One aspect of the Act requires owners of federally subsidized development to give at least two years notice of any sale, lease, or other disposition that would result in discontinuance of subsidy. The Act also gives a right of first refusal to purchase the housing to tenants’ associations, the Rhode Island Housing and Mortgage Finance Corporation, the housing authority of the city or town in which the development is located, and the city or town government, in that order. Rule VII set the procedure for this notice/right-of-refusal process. However, this provision has been supplanted by newer federal provisions and is no longer operational; therefore, this rule has become obsolete and is no longer necessary.

Rule VIII: Procedures to Determine the
Conformity of Transportation Plans,
Programs and Projects to the State
Implementation Plan for Air Quality

Rule Five: Metropolitan Planning
Organization: Transportation Planning

Rule IX: Transportation Planning and Public
Involvement Procedures

Changes: These two rules were combined and significantly streamlined. Redundancies were eliminated as were references to programs and practices no longer in operation.

N/A

Rule Four: Comprehensive Plan Review
Process

Explanation: This is a new rule; its purpose is to establish standards and procedures for the municipal adoption of local comprehensive plans, for State review and approval thereof, and for the achievement of the goals and intent of the “Rhode Island Comprehensive Planning and Land Use Act”. Section 45-22.2-10 of the Act mandates the State Planning Council adopt rules and regulations necessary to implement the standards established by the Act.